



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary *LC*

DATE: March 20, 2024

SUBJECT: AOR 2024-01 (Texas Majority PAC) Comment from NRSC

**Attached is AOR 2024-01 (Texas Majority PAC) Comment from NRSC
in response to Texas Majority PAC's supplemental comment.**

Attachment



RECEIVED

By Office of General Counsel at 12:42 pm, Mar 20, 2024

RECEIVED

By Office of the Commission Secretary at 1:27 pm, Mar 20, 2024

March 20, 2024

Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463
ao@fec.gov

Re: Advisory Opinion Request 2024-01 (Texas Majority PAC)

Dear Ms. Stevenson:

The NRSC submits this comment in response to Texas Majority PAC’s supplemental comment of March 18, 2024. While we do not deny that the Commission should provide a written response to TMP’s advisory opinion request (“AOR”) *if* the Commission can muster four votes in favor of a single opinion that is consistent with the law Congress entrusted the Commission to administer, 52 U.S.C. § 30106(b), *neither* draft opinion comports with prevailing law. The Commission cannot allow itself to miss the forest for the trees in trying to humor what is (admittedly) a skillfully worded AOR. Both draft opinions should be rejected.

Again, the Commission’s analysis should not be so blinkered that it fails to consider the broader consequences of adopting the legal interpretations urged by the requester. The NRSC urges the Commission to seriously consider the consequences that approving Draft B would have for the ability of federal candidates to benefit from corporate or even foreign¹ dollars influencing their own elections—and importantly, there are major elections for U.S. Senate and U.S. House being held this year in the jurisdiction where TMP intends to canvass. None of TMP’s four questions can or should be answered in a vacuum, given the requester’s unambiguously expressed intent to influence federal elections in coordination with its chosen federal candidates. **To be clear, approving any portion of Draft B (even in the newly proposed “modified” version), will be viewed by the NRSC as the Commission stepping into the playing field seven months out from election day and providing one party’s slate of federal candidates with an advantage not warranted under federal law.**

First, although TMP has stated that Texas law does not permit it to “use corporate or labor treasury funds to pay for the paid canvassing expenses described in [its] request,”² there is

¹ Kenneth P. Vogel, *Swiss Billionaire Quietly Becomes Influential Force Among Democrats*, N.Y. Times (May 3, 2021), <https://www.nytimes.com/2021/05/03/us/politics/hansjorg-wyss-money-democrats.html>; see also *How Swiss Billionaire Hansjörg Wyss and the Arabella Advisors Network Uses Foreign Dark Money to Sway American Politics and Policy*, Americans for Public Trust (July 2023), available at: <https://americansforpublictrust.org/document/report-foreign-influence-in-u-s-elections/>.

² AOR 2024-01 at 2.

nothing on the face of its request that prevents TMP from accepting contributions from committees that are funded by corporate contributions. For instance, if Draft B is approved, Texas Majority PAC—whose name is strikingly similar to its party’s primary Super PAC arms for U.S. House and U.S. Senate races (House Majority PAC and Senate Majority PAC)—could accept large contributions from both Super PACs then turn around and fund the same hypothetical activities referenced in the NRSC’s previous comment with those contributions.³ In fact, from the NRSC unique perspective as a national political party committee for U.S. Senate races, we expect that as soon as the Commission determines TMP’s proposed activities need not be reported as in-kind contributions, Senate Majority PAC and House Majority PAC will make large contributions to Texas Majority PAC and each [Insert State] Majority PAC in applicable states.

Under the vacuumed logic of Draft B’s components, Senate Majority PAC and House Majority PAC will almost certainly start funding state-level committees that coordinate fully with federal candidates, and they will do so with soft money funded substantially by corporate contributions. If the Commission prohibits a certain type of coordination on the federal level between candidates and Super PACs, how can that same level of coordination be permitted between candidates and state-level committees when those state committees can be funded substantially by Super PACs? Further, the Commission’s prohibition on corporate-funded get-out-the-vote activities will immediately become a dead letter if a corporation can achieve the same objective by giving to an outside group that then gives to TMP, which then openly coordinates with the federal candidates that it wants to help. In short, so long as an outside group is the initial funder, TMP can achieve an end run around the rule codified in 11 C.F.R. § 114.4(a). And while TMP may argue that such activity could implicate prohibitions against straw contributions, that argument assumes each of these entities are federal entities regulated by the Commission—unlike TMP—underscoring the scale of the loophole TMP asks the Commission to approve.

Importantly, TMP’s activities appear to fit the definition of “federal election activity.”⁴ Under statute and regulations, “Federal election activity” includes “voter registration activity,”⁵ “get out the vote activity,”⁶ and “voter identification.”⁷ TMP’s comments conveniently elide this inconvenient fact. It seeks to use soft unregulated money to participate in federal election activity while clearly coordinating with Democratic candidates for federal office—without any oversight from the Commission. TMP hides behind a component-by-component analysis and hopes the Commission won’t recognize that the scope of its request is greater than the sum of its parts. Approving TMP’s proposed activities would open the door to soft-money-funded federal

³ FEC Adv. Op. Req. 2024-1 (Texas Majority PAC), Comment on Drafts A and B (NRSC) (March 13, 2024).

⁴ 52 U.S.C. 30101(20); 11 C.F.R. § 100.24.

⁵ *Id.* at 100.24(2).

⁶ *Id.* at 100.24(3).

⁷ *Id.* at 100.24(4).

election activity to benefit Democrat candidates for U.S. House, U.S. Senate, and the White House.

Finally, Draft A plainly should be rejected because it causes an unnecessary extension of the definition of “public communication.” The Commission has long been clear that such “rulemaking by advisory opinion” is improper. And, in all events, TMP’s request to use corporate funds to subsidize federal campaign activity cannot be countenanced.

For these reasons, the Commission should reject both Drafts A and B and make clear that next time a requester seeks to change a foundational principle of the current federal campaign finance regime, it should do so through Congress and not waste the Commission’s nor Commenters’ resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Dollar", is centered on the page.

Ryan G. Dollar
NRSC General Counsel